



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

AF/IFW

In the application of

NICK E. CIAVARELLA, *et al.*

Serial No. 10/693,567

Filed: October 25, 2003

For: UNIVERSAL COLLAR

CERTIFICATE OF MAILING

I hereby certify that the following correspondence was deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop Appeal Brief, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 12, 2007.

RAY L. WEBER, Reg. No. 26,519

TRANSMITTAL SHEET

Enclosed are the following documents:

Appeal Brief (with Certificate of Mailing)

Claims Appendix

Evidence Appendix

Related Appeals and Interferences Appendix

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Respectfully Submitted,

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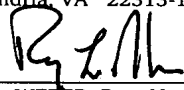


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Mail Stop Appeal Brief Patents
Commissioner for Patents
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

This is an Appeal to the Board of Patent Appeals from the final decision dated November 13, 2006, of the primary Examiner finally rejecting claims 2-7 and 9. A Notice of Appeal was filed on February 12, 2007.

I. Real Party in Interest

The above-identified application was filed on October 25, 2003, and assigned Serial No. 10/693,567, naming Nick E. Ciavarella, Mark E. Rosenkranz, and Detlev Franz Smith as inventors. Their rights were assigned to Joseph S. Kanfer. The Assignment was recorded by the United States Patent and Trademark Office at Reel/Frame 014719/0325.

II. Related Appeals and Interferences

None.

III. Status of Claims

Claims 1, 8, 10 and 11 are cancelled. Claims 2-7 and 9 stand finally rejected and are all appealed.

IV. Status of the Amendments

The Appellant submitted an amendment after final rejection under 37 C.F.R. 1.116 on January 8, 2007. The amendment was not entered by the Examiner and therefore the claims presented for appeal are those presented in Amendment C mailed August 24, 2006.

V. Summary of the Claimed Subject Matter

The present invention relates to a universal collar that may be attached to a container used in a dispenser having a keying system, where the universal collar secures the container within the dispenser while bypassing the keying system. Spec. pg. 6, lines 17-25.

The universal collar was developed because existing dispensers often include a receiver that includes a key-plate having a recessed keyway formed therein that mates with a projecting key formed on the container or a collar attached to the container. In this way, a unique fit is established between the container and the dispenser. Spec. pg. 1, ¶ 2-3.

While these systems offer advantages in that the proper container will be associated with the appropriate dispenser, due to the proliferation of different dispensers, some consumers would prefer to simplify the stocking of replacement containers by purchasing a container that may be used universally with all of the various dispensers, irrespective of any keying system associated with those dispensers. Spec. pg. 2, ¶ 2.

With that in mind, the invention, as claimed in independent claim 2, provides a universal collar (40) that attaches to a pump (25) and, in turn, a container (20) used in a dispenser (10) having a keyplate (31). The universal collar (40) comprises a body (43) having a first flange (41) and a second flange (42). Pg. 6, Ln. 4-5. The flanges (41, 42) extend outward and are axially spaced from each other for receiving the keyplate (31) therebetween. Pg. 6, Ln. 5-7. The flanges (41, 42) are connected on a forward side of the universal collar (40) by a vertically extending rib (46). Pg. 6, Ln. 17-20.

Independent claim 3 provides a universal collar (40) that attaches to a pump (25) and, in turn, a container (20) used in a dispenser (10) having a keyplate (31). The universal collar (40) comprises a body (43) having a first flange (41) and a second flange (42). Pg. 6, Ln. 4-5. The flanges (41, 42) extend outward and are axially spaced from each other for receiving the keyplate (31) therebetween. Pg. 6, Ln. 5-7. At least one of the flanges (41, 42) defines a notch (48 or 49) on a rearward side thereof for receiving a projecting portion (35) of the dispenser. Pg. 6, Ln. 23-27.

Claim 4 depends from claim 3 and adds the limitation that the notch (48 or 49) is centered within the flange (41 or 42) on the rearward side.

Independent claim 5 provides a universal collar (40) that attaches to a pump (25) and, in turn, a container (20) used in a dispenser (10) having a keyplate (31), the universal collar comprising a body (43) having a first flange (41) and a second flange (42). Pg. 6, Ln. 4-5. The flanges (41, 42) extend outward and are axially spaced from each other for receiving the keyplate (31) therebetween. Pg. 6, Ln. 5-7. The body (43) includes a top edge (53) that defines a locating recess (51 or 52) for receipt of a projection (34) on the container. Pg. 6, Ln. 28-30. The recess (51 or 52) has a base (57) and a pair of upstanding sides (56, 58). Pg. 7, Ln. 3-6. The sides (56, 58) are circumferentially spaced from each other for receipt of the projection therebetween. Pg. 7, Ln. 3-6.

Claim 6 depends from claim 5 and adds the limitation that one of the sides (56) extends perpendicular to the base and the other of the sides extends obliquely relative to said base. Pg. 7, Ln. 3-6.

Claim 7 depends from claim 5 and adds the limitation that the top edge (53) extends axially upward relative to the first flange and extends in a circular fashion to circumscribe a portion of the container. Pg. 6, Ln. 28-30; Fig. 4.

Independent claim 9 provides a universal collar comprising a hollow cylindrical collar (40) having a first flange (41) and a second flange (42) extending at least rearwardly therefrom, and axially spaced to define a receiver clearance therebetween. Pg. 6, Ln. 4-7. The flanges (41, 42) extend radially outward from the collar (40) and each flange (41, 42) defines a notch (48, 49) that opens rearwardly relative to said collar (40). Pg. 6, Ln. 23-27.

VI. Grounds of Rejection to be Reviewed on Appeal

Claims 3-7 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,974,753 to Tucker, *et al.*

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Tucker *et al.* in view of U.S. Patent No. 5,377,876 to Smernoff.

VII. Argument

A. Rejection of claims 3-7 and 9 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,974,753 to Tucker, *et al.*

Claim 3

The Examiner asserts that Tucker, *et al.* shows a collar comprising a keyplate (64), a first flange (30) and a second flange (40). 11/13/06 Office Action, Pg. 2. He further asserts that Tucker discloses the claimed invention except for the notch (68) on the flange (30) and the projecting part (32) on the dispenser. *Id.* Though the notch and flange of Tucker are not configured the same as the invention of claim 3, the Examiner asserts that it would have been obvious to reverse the components of Tucker, *et al.* to reach the present invention. *Id.*

Appellant respectfully disagrees with the Examiner. Tucker, *et al.* does not show a universal collar that has a body having a first flange and a second flange wherein the flanges extend outward and are axially spaced for receiving a keyplate therebetween. Specifically, the flanges of Tucker, *et al.* do not receive a keyplate therebetween. As is known in the art, and described in the Appellants' specification, the keyplate is the portion of the dispenser that provides keying notches that interact with a corresponding key on the collar. The present invention avoids this by providing a pair of flanges that, when installed, are positioned *above and below* the keyplate. In this manner the keying features are avoided. Tucker, *et al.* does not include a first and second flange that is axially spaced so that the keyplate is received. As shown in Fig. 1 of Tucker, *et al.*, the Examiner's asserted keyplate (64) does not include any keying feature whatsoever. As discussed above, this feature is not provided because the

dispenser of Tucker, *et al.* is intended to be keyed, the very antithesis of the present invention. For this reason, it is believed that claim 3 is patentable.

Claim 5

Claim 5 requires that the collar body includes a top edge that defines a locating recess that receives a projection on the container. This recess is defined by a base and a pair of upstanding sides, wherein the sides are circumferentially spaced from each other to receive the projection therebetween. The Examiner does not specifically address the recess in the Office Action of November 13th and so it is difficult for Appellant to address this rejection. It is notable that the recess of the present invention is included to provide clearance for the projection of the container. Appellants' Specification, Pg. 7, Ln. 3-6. No such feature is taught in Tucker *et al.*, in fact, Tucker, *et al.* does not disclose a projection on the container and certainly does not teach any recess on the collar. See Tucker Figs. 4 and 5.

The Examiner apparently asserts that it would have been obvious to reverse the notch (68) and key (32) of Tucker, *et al.* and that the resulting structure reads on claim 5. However, there is no motivation to reverse the key and notch of Tucker, *et al.* because no container projection is disclosed. Without a container notch to accommodate, one would not be motivated to reverse the arrangement. Further, even if the features were reversed, the resulting notch would be on the radial edge of the flange and not on the top edge as claimed. Thus, even if the features were reversed, they do not teach the claimed invention. For these reasons, it is believed that claim 5 is patentable.

Claim 6

Claim 6, which depends from claim 5, further requires that one of the sides of the recess extends perpendicular to the base and the other extends obliquely relative to the base of the recess. This feature is provided to allow a projection of the container to be received into the recess if the container is rotatably coupled (*i.e.*, threaded) to the collar. The oblique side allows entry into the recess while the perpendicular wall acts as a stop, preventing rotation of the collar that could cause misalignment between the collar and container.

Inasmuch as Tucker, *et al.* does not disclose a recess on the collar, it further does not disclose any recess anywhere including a perpendicular wall and a wall extending obliquely from the base. The Examiner does not assert any such teaching in Tucker, *et al.* and therefore it is believed that claim 6 is independently patentable.

Claim 7

Claim 7, which depends from claim 5, requires that the top edge extends axially upward relative to the first flange and in a circular fashion to circumscribe a portion of the container. Again, the Examiner has not specifically addressed this feature in his rejections. Tucker *et al.* does not disclose a top edge extending axially upward from the collar to circumscribe a portion of the container, wherein the top edge includes a recess. Because no such feature is taught in Tucker *et al.* and because the Examiner has not asserted as much, it is believed that claim 7 is independently patentable.

Claim 9

Among other limitations, claim 9 requires that both flanges include notches on the rearward side. The Examiner does not make any specific findings that Tucker, *et al.* teaches two notches. Nor does he assert that it would have been obvious to provide both flanges with notches. Because no such feature is taught in Tucker, *et al.* and because the Examiner has not asserted as much, it is believed that claim 9 is patentable.

B. Rejection of claim 2 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,974,753 to Tucker, *et al.* in view of U.S. Patent No. 5,377,876 to Smernoff

Claim 2 is patentable for the same reasons as those discussed with reference to claim 3. Specifically, Tucker, *et al.* does not show a universal collar that has a body having a first flange and a second flange wherein the flanges extend outward and are axially spaced for receiving a keyplate therebetween. For the sake of brevity, the

Applicant incorporates the prior arguments, and asserts that for the same reasons, claim 2 is patentable.

Claim 2 further requires that the flanges be connected by a vertically extending rib. This feature is not taught in Tucker, *et al.* and thus the Examiner relies on the teachings of Smernoff to show the rib. However, the structure that the Examiner relies on in Smernoff is not a collar used for supporting a container within a dispenser but is merely the spout for a container packaged within a box. Smernoff is non-analogous art, in that it does not fall within the soap-dispensing field applicable to the Appellants' invention and is not reasonably pertinent to the problem faced by the inventor in this case. In particular, the universal collar of the present invention is used in connection with a pump such that the container is subjected to reciprocal motion of the pump and the vacuum created by the withdrawal of material from the container.

As discussed on page 6, lines 22-26 of the Appellants' specification, the vertical rib on the universal collar is provided to limit rotation of the collar resulting from deformation of the container commonly occurring during the pumping process. To that end, the vertical rib is placed on the forward side of the collar so that it interacts with the cover of the dispenser. Smernoff discloses a box container having a spout with a cap that is removed to allow material to flow from the container and is not concerned with any container deformation caused by a pumping process. The ribs are provided to improve the gripability of the spout and are spaced at regular intervals about the circumference thereof. No teaching of placement of the vertical ribs on a forward side so that they could interact with the dispenser is shown. Consequently, the Appellants believe that claim 2 is not obvious over Tucker in view of Smernoff.

In conclusion, in light of the discussion above, it is not believed that either Tucker, *et al.* or Smernoff disclose the claimed features of the present invention. The Appellants respectfully request reconsideration of the foregoing rejections and entry of a notice of allowance for claims 2-7 and 9.

VIII. Claims Appendix

Attached.

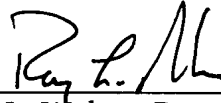
IX. Evidence Appendix

Attached.

X. Related Appeals and Interferences Appendix

Attached.

Respectfully submitted,



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Claims Appendix

1. (Canceled).
- 1 2. (Previously presented) A universal collar that attaches to a pump and, in
2 turn, a container used in a dispenser having a keyplate, the universal collar
3 comprising:
4 a body having a first flange and a second flange, wherein said flanges
5 extend outward and are axially spaced from each other for receiving the
6 keyplate therebetween, wherein said flanges are connected on a forward
7 side of the universal collar by a vertically extending rib.
- 1 3. (Previously presented) A universal collar that attaches to a pump and, in
2 turn, a container used in a dispenser having a keyplate, the universal collar
3 comprising:
4 a body having a first flange and a second flange, wherein said flanges
5 extend outward and are axially spaced from each other for receiving the
6 keyplate therebetween, wherein at least one of said flanges defines a notch
7 on a rearward side thereof for receiving a projecting portion of the
8 dispenser.
- 1 4. (Original) The universal collar of Claim 3, wherein said notch is centered
2 within said flange on said rearward side.
- 1 5. (Previously presented) A universal collar that attaches to a pump and, in
2 turn, a container used in a dispenser having a keyplate, the universal collar
3 comprising:
4 a body having a first flange and a second flange, wherein said flanges
5 extend outward and are axially spaced from each other for receiving the
6 keyplate therebetween, wherein said body includes a top edge, said top
7 edge defining a locating recess for receipt of a projection on the container,
8 said recess having a base and a pair of upstanding sides, wherein said sides

1 are circumferentially spaced from each other for receipt of the projection
2 therebetween.

1 6. (Original) The universal collar of Claim 5, wherein one of said sides extends
2 perpendicular to said base and the other of said sides extends obliquely
3 relative to said base.

1 7. (Original) The universal collar of Claim 5, wherein said top edge extends
2 axially upward relative to said first flange and extends in a circular fashion
3 to circumscribe a portion of the container.

8. (Canceled).

1 9. (Previously presented) A universal collar comprising a hollow cylindrical
2 collar having a first flange and a second flange extending at least
3 rearwardly therefrom, and axially spaced to define a receiver clearance
4 therebetween, wherein said flanges extend radially outward from said
5 collar, each flange defining a notch that opens rearwardly relative to said
6 collar.

10. (Canceled).

11. (Canceled).

Evidence Appendix

None.

Related Appeals and Interferences Appendix

None.